

**REMARKS**

The Examiner issued a Notification of Non-Compliant Appeal Brief, dated March 20, 2008, which alleged various issues with the Appeal Brief filed on December 28, 2007. These allegations will be addressed below.

**CONCISE EXPLANATION OF THE SUBJECT MATTER REQUIREMENT**

In the Notification of Non-Compliant Appeal Brief, dated March 20, 2008, the Examiner indicates that the Appeal Brief, filed on December 28, 2007, must contain the concise explanation of the subject matter in each of the argued claims. This assertion by the Examiner is respectfully traversed.

37 C.F.R. 41.37(c)(v) states:

*Summary of claimed subject matter.* A concise explanation of the subject matter defined in **each of the independent claims involved in the appeal**, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, **every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified** and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters. [Emphasis Added.]

More specifically, 37 C.F.R. 41.37(c)(v) requires that a concise explanation of the subject matter is **only** required for the independent claims involved in the Appeal. Moreover, 37 C.F.R. 41.37(c)(v) requires a concise explanation of the subject matter with respect to dependent claims involved in the Appeal **only** when those dependent claims include means plus function language or step plus function language. Furthermore, 37 C.F.R. 41.37(c)(v) **only** requires an identification of the structure or acts in the specification that correspond to the means plus function language or step plus function language.

Since the dependent claims involved in the present Appeal do not include any means plus function language or step plus function language, the Appellant is **not**

required to provide a concise explanation of the subject matter defined in each of the dependent claims involved in the present Appeal.

If the Examiner desires to maintain this position, the Examiner is respectfully requested to provide the Appellant the statutory or codified authority which empowers the Examiner to require a concise explanation of the subject matter defined in each of the dependent claims involved in the Appeal when the dependent claims involved in the Appeal do not include any means plus function language or step plus function language.

### **TRUE COPY OF APPEALED CLAIMS**

In the Notification of Non-Compliant Appeal Brief, dated March 20, 2008, the Examiner indicates that the Appeal Brief, filed on December 28, 2007, did not contain a correct copy of the claims. This assertion by the Examiner is respectfully traversed.

The copy of the claims provided with the Appeal Brief, filed on December 28, 2007, is a true copy of the amended claims presented in the Response, filed on November 15, 2007. The Examiner did not formally deny entry of these amended claims.

**MPEP** Section 714.13 states, "In the event that a proposed amendment does not place the case in better form for appeal, nor in condition for allowance, applicant should be promptly informed of this fact, whenever possible, within the statutory period."

Since the Examiner did not indicate that the amended claims presented in the Response, filed on November 15, 2007, would be denied entry, **MPEP** Section 714.13 would indicate that the Examiner approved entry of the amended claims.

Assuming that the inclusion of the first page of the Appellant's Response, filed on November 15, 2007, with the notation, "Do Not Enter" constitutes a formal indication by the Examiner that the amended claims presented in the Response, filed on November 15, 2007, would be denied entry, the Examiner failed to provide any basis for denying entry of amended claims presented in the Response, filed on November 15, 2007.

More specifically, **MPEP** Section 714.13 states:

If the proposed amendment raises the issue of new matter, the examiner should identify the subject matter that would constitute new matter. If the proposed amendment presents new issues requiring further consideration and/or search, the examiner should provide an explanation

as to the reasons why the proposed amendment raises new issues that would require further consideration and/or search. The reasons for nonentry should be concisely expressed.

It is clear from the record that the Examiner did not provide any basis for denying entry of the amended claims presented in the Response, filed on November 15, 2007. Moreover, it is clear from the record that the Examiner did not provide reasons which **concisely express** why the amended claims presented in the Response, filed on November 15, 2007, should be denied entry.

The Examiner's failure to clearly indicate that the amended claims presented in the Response, filed on November 15, 2007, were denied entry, and the Examiner's failure to provide reasons which **concisely express** why the amended claims presented in the Response, filed on November 15, 2007, should be denied entry, is clear evidence that the amended claims presented in the Response, filed on November 15, 2007, were entered.

On the other hand, if the amended claims presented in the Response, filed on November 15, 2007, were denied entry, the Examiner's failure to clearly indicate that the amended claims presented in the Response, filed on November 15, 2007, were denied entry, and the Examiner's failure to provide reasons which **concisely express** why the amended claims presented in the Response, filed on November 15, 2007, should be denied entry is clear evidence that the Examiner's refusal to deny entry of the amended claims presented in the Response, filed on November 15, 2007, was arbitrary and capricious.

In alternative, the amended claims presented in the Response, filed on November 15, 2007, did not raise any issue of new matter or new issues requiring further consideration and/or search. The amendments to the claims merely corrected some form issues with respect to paragraph labeling.

More specifically, the amendment to claim 5, for example, merely changed the paragraph identifier from "e" to "f" so as to be consistent with claim 1. This amendment did not raise any issue of new matter or new issues requiring further consideration and/or search.

The amendment to claim 6 also merely changed the paragraph identifiers so as to be consistent with claim 1. This amendment did not raise any issue of new matter or new issues requiring further consideration and/or search.

The amendment to claim 7 also merely corrected a grammatical error by changing "include" to "includes." This amendment did not raise any issue of new matter or new issues requiring further consideration and/or search.

The amendment to claims 17-20 also merely changed the paragraph identifiers so as to be consistent with claim 16. These amendments did not raise any issue of new matter or new issues requiring further consideration and/or search.

Since the Examiner failed to clearly indicate that the amended claims presented in the Response, filed on November 15, 2007, were denied entry, and to provide reasons which **concisely express** why the amended claims presented in the Response, filed on November 15, 2007, should be denied entry and the amendments did not raise any issue of new matter or new issues requiring further consideration and/or search, the record provides clear evidence that the amended claims presented in the Response, filed on November 15, 2007, were entered.

On the other hand, since the Examiner failed to clearly indicate that the amended claims presented in the Response, filed on November 15, 2007, were denied entry, and to provide reasons which **concisely express** why the amended claims presented in the Response, filed on November 15, 2007, should be denied entry and the amendments did not raise any issue of new matter or new issues requiring further consideration and/or search, the record provides clear evidence that the Examiner's refusal to deny entry of the amended claims presented in the Response, filed on November 15, 2007, was arbitrary and capricious.

### **SUMMARY**

As set forth above, since the dependent claims involved in the present Appeal do not include any means plus function language or step plus function language, the Appellant is **not** required to provide a concise explanation of the subject matter defined in each of the dependent claims involved in the present Appeal.

Moreover, the Examiner's failure to clearly indicate that the amended claims presented in the Response, filed on November 15, 2007, were denied entry, and the Examiner's failure to provide reasons which **concisely express** why the amended claims presented in the Response, filed on November 15, 2007, should be denied entry, is clear evidence that the amended claims presented in the Response, filed on November 15, 2007, were entered.

On the other hand, if the amended claims presented in the Response, filed on November 15, 2007, were denied entry, the Examiner's failure to clearly indicate that the amended claims presented in the Response, filed on November 15, 2007, were denied entry, and the Examiner's failure to provide reasons which **concisely express** why the amended claims presented in the Response, filed on November 15, 2007, should be denied entry is clear evidence that the Examiner's refusal to deny entry of the amended claims presented in the Response, filed on November 15, 2007, was arbitrary and capricious.

Accordingly, in view of the reasons set forth above, the Examiner is respectfully requested to reconsider and accept the attached Appeal Brief as being in compliance with 37 C.F.R. 41.37. Also, an early indication of allowability is earnestly solicited.

Respectfully submitted,



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